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Michael E. Ramsden, ISB #2368

Attorneys for Defendants Bentley J. Blum and the Blum Real Estate Trust

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA,

Plaintiff,

V.

FEDERAL RESOURCES
CORPORATION; BENTLEY J. BLUM
personally and in his capacity as Trustee of
the BLUM REAL ESTATE TRUST; and
CAMP BIRD COLORADO, INC.,

Defendants.

AND RELATED CLAIMS.

Case No. 11-cv-00127-BLW

BENTLEY J. BLUM'S ELECTION OF
EXEMPT PROPERTY; APPLICATION
FOR HEARING TO DETERMINE
PROPERTY AND/OR EXEMPT
PROPERTY

Defendant Bentley J. Blum ("Mr. Blum"), pursuant to 28 U.S.C. § 3014: (i) hereby elects to exempt certain joint tenants by the entireties property located at Fisher Island, Florida, to the extent it is Mr. Blum's "property", for purposes of Subchapter A of Chapter 176 - Federal Debt Collection Procedure (28 U.S.C. §§ 3001-3015) and (ii) applies to this Court for a determination and a hearing, if necessary, in accord with 28 U.S.C. § 3014, that such property either is not his property or that it is exempt.

PURPOSE

1. The purpose of this Election and Application is twofold. The first purpose is to serve as an election by Mr. Blum, pursuant to 28 U.S.C. § 3014, that certain real property located at 15811 Fisher Island Drive Miami, Miami-Dade County, Florida (the “Fisher Island Property”) owned by Mr. Blum and his spouse Laura Blum (a/k/a Laura Utley) as tenants by the entireties, to the extent it is Mr. Blum’s “property”, is exempt within the meaning of 28 U.S.C. § 3014(a)(2)(B). In either case (whether the Fisher Island Property is Mr. Blum’s property or is tenants by the entireties property), the judgment obtained by the United States of America (“Government”) cannot and does not constitute a lien against the Fisher Island Property and the Government cannot execute on its judgment against the Fisher Island Property. The second purpose is to apply for a hearing authorized by 28 U.S.C. § 3014, to the extent necessary, to determine the applicability of the § 3014 exemption to the Fisher Island Property. This Election and Application is supported by the matter hereinafter set forth and the sworn Declaration of Mr. Blum (“Blum Declaration”) attached hereto as Exhibit A and incorporated herein

2. Specifically, 28 U.S.C. § 3014(a) provides that a debtor, such as Mr. Blum, may, “in an action or proceeding under this chapter, elect to exempt property listed in . . . paragraph (2)”. Paragraph 2 provides, in pertinent part:

(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety . . . to the extent that such interest is exempt from process under applicable nonbankruptcy law.

(Emphasis added.) The Fisher Island Property either (i) is not Mr. Blum’s “property” precisely because it is owned by him and Laura Blum as tenants by the entireties or (ii) is

exempt because it is owned by him and Laura Blum as tenants by the entireties, in each case for purposes of Florida law (i.e., nonbankruptcy law) and, therefore, qualifies for an exemption under United States law.

THE JUDGMENT

3. The Government obtained a judgment in the above captioned case against Mr. Blum for \$4,406,340.66 (the “Judgment”).

4. The Government exemplified the Judgment in Miami-Dade County. A copy of the Abstract of Judgment from Miami-Dade County is attached hereto as Exhibit B.

5. The Abstract of Judgment states, in pertinent part, that the Judgment “creates a lien on all real property of [Mr. Blum]”.

6. Under 28 U.S.C. § 3014(a), upon election by Mr. Blum, he is entitled to an order recognizing that the Fisher Island Property either (i) is not Mr. Blum’s “property” or (ii) is exempt, in each case for purposes of Florida law (i.e., nonbankruptcy law) and, therefore, qualifies for an exemption under United States law.

THE FISHER ISLAND PROPERTY IS TENANTS BY THE ENTIRETIES PROPERTY

7. Mr. Blum and Laura Blum were married at New York on August 1, 1982. A true and correct copy of their marriage certificate is attached to the Blum Declaration. See Blum Declaration, ¶ 4.

8. Mr. Blum and Laura Blum, while married, acquired the Fisher Island Property on April 15, 1988. A true and correct copy of the deed granted to Mr. Blum and Laura Blum for the Fisher Island Property is attached to the Blum Declaration. See Blum Declaration, ¶ 7.

9. The Florida Supreme Court has stated, as a rule, that any real or personal property owned jointly by a husband and wife is presumed to be owned as tenants by the entirety. *Losey v. Losey*, 221 So. 2d 417 (Fla. 1969) (“Where property is acquired specifically in the name of both husband and wife, they become seized of the estate thus granted per tout et non per my, and not as * * * tenants in common.” quoting *Bailey v. Smith*, 89 Fla. 303, 103 So. 833, 834 and *English v. English*, 66 Fla. 427, 63 So. 822); *Beal Bank v. Almand and Associates*, 780 So.2d 45, 53 (Fla. 2001) (“it is considered to be a rule of construction that a tenancy by the entirety is created.” (quoting *First Nat’l Bank v. Hector Supply Co.*, 254 So.2d 777, 780 (Fla.1971))). The presumption that real property titled in the name of husband and wife creates a tenancy by the entirety is not rebuttable. *Beal Bank*, supra, was explicit in this regard. There, the court stated:

In the case of ownership of real property by husband and wife, the ownership in the name of both spouses vests title in them as tenants by the entirety. See *Losey v. Losey*, 221 So. 2d 417, 418 (Fla. 1969).⁹ Thus, “[a] conveyance to spouses as husband and wife creates an estate by the entirety in the absence of express language showing a contrary intent.” *In re Estate of Suggs*, 405 So. 2d 1360, 1361 (Fla. 5th DCA 1981) (citing *Losey v. Losey*, 221 So. 2d 417 (Fla. 1969)); see *Espenship v. Carter*, 514 So. 2d 1108, 1109 (Fla. 1st DCA 1987); *Dixon v. Dixon*, 155 So. 2d 189, 191 (Fla. 2d DCA 1963). (Footnotes omitted.)

Beal Bank, 780 So.2d at 54. To emphasize its point, the court at footnote 9, stated:

In addition, in the case of real property, the owners do not need to be described as husband and wife in the deed and their marital relationship does not need to be referred to in the deed in order to establish a tenancy by the entirety. See *American Cent. Ins. Co. v. Whitlock*, 165 So. 380, 381 (Fla. 1936).

Id., n.9.

10. Mr. Blum and Laura Blum acquired the Fisher Island Property, jointly, by deed dated April 15, 1988, a time when they already had been married for over 5 years, and at a time when they were cohabiting (See Blum Declaration, ¶¶ 4, 5 and 6).

11. Under the undisputed facts, and as a matter of non-bankruptcy, Florida law, the Fisher Island Property is property owned by Mr. Blum and Laura Blum as tenants by the entirety.

THE FISHER ISLAND PROPERTY IS NOT MR. BLUM'S PROPERTY

12. Under Florida law, tenants by the entirety property is not the property of either spouse; i.e., the Fisher Island Property is not the property of Mr. Blum.

13. The Florida Supreme Court has described tenants by the entirety property, thusly:

When a married couple holds property as a tenancy by the entirety, each spouse is said to hold it "per tout," meaning that each spouse holds the "whole or the entirety, and not a share, moiety, or divisible part." *Bailey v. Smith*, 89 Fla. 303, 103 So. 833, 834 (1925). Thus, property held by husband and wife as tenants by the entirety belongs to neither spouse individually, but each spouse is seized of the whole.

Beal Bank v. Almand and Associates, 780 So.2d 45, 53 (Fla.2001). (Emphasis added.)

14. The Florida Supreme Court has explained the effect of tenants by the entirety property in terms of a judgment against one spouse, only, thusly:

[I]f property is held as a joint tenancy with right of survivorship [in contrast to tenants by the entirety], a creditor of one of the joint tenants may attach the joint tenant's portion of the property to recover that joint tenant's individual debt. See *Sitomer*, 660 So.2d at 1114. However, when property is held as a tenancy by the entirety, only the creditors of both the husband and wife, jointly, may attach the tenancy by the entirety property; the

property is not divisible on behalf of one spouse alone, and therefore it cannot be reached to satisfy the obligation of only one spouse. See *Winters v. Parks*, 91 So.2d 649, 651 (Fla. 1956); *Sitomer*, 660 So.2d at 1114.

Id. at 53.

15. The Government is not a creditor of Laura Blum with respect to the Judgment.

16. Because the Fisher Island Property is tenants by the entireties property, and the Government is not a creditor of Laura Blum, as a matter of Florida state law, the Fisher Island Property is not property of Mr. Blum to which the Judgment attaches.

**THE FISHER ISLAND PROPERTY IS EXEMPT
FROM THE JUDGMENT; ELECTION**

17. Even assuming, for purposes of argument, that the Fisher Island Property was property in which Mr. Blum has an interest, it is exempt from judgment under 28 U.S.C. § 3014 where Mr. Blum elects to exempt such property because under Florida state law, it is tenants by the entireties property. Mr. Blum hereby makes such election.

18. In pertinent part, 28 U.S.C. § 3014(a)(2) authorizes a debtor, such as Mr. Blum to elect to exempt tenants by the entireties property from the Judgment. 28 U.S.C. § 3014(a)(2) provides:

(A) any property that is exempt under Federal law, other than paragraph (1), or State or local law that is applicable on the date of the filing of the application for a remedy under this chapter at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the filing of such application, an interest as a tenant by the entirety or joint tenant, or an interest in a community estate, to the extent that such interest is exempt from process under applicable nonbankruptcy law.

19. All of the elements of 28 U.S.C. § 3014(a)(2)(A) and (B) are here present;

- i. As explained above, the Fisher Island Property is exempt from a creditor of Mr. Blum because it is tenants by the entireties property;
- ii. Mr. Blum has been domiciled in Florida and at Fisher Island for more than 180 days preceding this Motion and the election herein made by Mr. Blum (See Blum Declaration, ¶¶ 2, 3);
- iii. any interest in the Fisher Island Property which Mr. Blum had, immediately before his Motion and the election herein made by Mr. Blum, was as a tenant by the entireties; and
- iv. Mr. Blum's tenancy by the entireties interest in the Fisher Island Property is exempt from process under applicable nonbankruptcy law; i.e., under Florida law relating to tenancy by the entities.

20. Under well settled Florida law cited above, the entirety of Mr. Blum's interest in the Fisher Island Property is exempt from process under applicable nonbankruptcy law.

Wherefore, Mr. Blum respectfully requests this Court to issue an order that the Fisher Island Property either is not Mr. Blum's "property" or is exempt, in each case for purposes of Subchapter A of Chapter 176 - Federal Debt Collection Procedure (28 U.S.C. §§ 3001-3015).

DATED this 3rd day of June 2015.

RAMSDEN & LYONS, LLP

By /s/Michael E. Ramsden
Michael E. Ramsden, Of the Firm
Attorneys for Defendants Blum

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent a Notice of Electronic Filing to the following persons:

Steven B Andersen

sba@andersenbanducci.com,ask@andersenbanducci.com,tpk@andersenbanducci.com,tie@andersenbanducci.com,sdm@andersenbanducci.com,lmk@andersenbanducci.com,cme@andersenbanducci.com

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/s/Michael E. Ramsden
Michael E. Ramsden

EXHIBIT A

DECLARATION OF BENTLEY J. BLUM

1. I am 73 years of age and not suffering from any mental incapacity.
2. I am and have been a full time resident of the state of Florida since approximately 2000.
3. Since that time, I have resided exclusively and continuously at a home located at 15811 Fisher Island Drive Miami, Florida 33109.
4. I married Laura Utley on August 1, 1982. A true and correct copy of our marriage certificate is attached hereto as Exhibit A.
5. Laura Utley and I have been married continuously since August 1, 1982.
6. Laura Utley and I cohabited from the time we were married until approximately 2000 when we began an informal separation.
7. On April 15, 1988, my wife Laura Utley and I acquired our 15811 Fisher Island Drive Miami, Florida as tenants by the entireties. A true and correct copy of the deed for our 15811 Fisher Island Drive Miami, Florida is attached hereto as Exhibit B. At the time my wife Laura Utley and I acquired our 15811 Fisher Island Drive Miami, Florida, we were obviously married, cohabiting and the United States was not an actual, pending or threatened creditor of mine relating to that certain case pending in the United States District Court for Idaho at Case No. 11-cv-00127-BLW.

I declare under penalty of perjury that the foregoing is true and correct.



Bentley J. Blum
Executed on June 1, 2015
Fisher Island, Florida

EXHIBIT A

Oct 23 00:03:54a

Laura Utley

212

p.1

A

THE CITY OF NEW YORK
OFFICE OF THE CITY CLERK
MARRIAGE LICENSE BUREAU-BOROUGH OF MANHATTAN

1982 MANHATTAN INDEX

No 11770

Certificate of Marriage Registration

This Is To Certify That Bentley Joseph Blum
residing at 920 Park Ave, NY born June 19, 1941
at New York, NY USA and Laura Utley
residing at 920 Park Ave, NY born June 21, 1940
at Detroit, Michigan, USA

Were Married

on August 7, 1982 at Rockland N.Y
as shown by the duly registered license and certificate of marriage of said persons on file in this office.



RF 226 (REV. 9/80)

FACSIMILE SIGNATURE AND SEAL
ARE PRINTED PURSUANT TO SECTION 11-A,
DOMESTIC RELATIONS LAW OF NEW YORK
(SEE REVERSE SIDE FOR EXTRACT OF LAW)

CERTIFIED THIS DATE AT THE
CITY CLERK'S OFFICE, MANHATTAN, N.Y.

September 8 19 82

David N. Dinkins
David N. Dinkins
City Clerk of the City of New York

EXHIBIT A

1988 APR 22 AM 10:58

88R138345

OFF REC 13652 PS 2079

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made this 15th day of April, 1988, by and between ISLAND DEVELOPERS, LTD., a Florida limited partnership, as "Grantor", of the County of Dade and State of Florida, and BENTLEY J. BLUM and LAURA U. BLUM, his wife

"Grantee(s)", whose post office address is

15811 Fisher Island Drive, Fisher Island, Florida 33109

Documentary Stamps Collected \$ 3,975.00

\$ _____ SURTAX Doc. Stamps Collected

Class "C" Intangibles Tax Collected \$ _____

Richard P. Bunker, Clerk, D. Co. County, Fla.

By R. K. Smith 4/22/88 DC

W I T N E S S E T H:

That the Grantor, for and in consideration of the sum of Ten (\$10.00) Dollars, and other good and valuable consideration, to it in hand paid by the Grantee(s), the receipt and adequacy of which is hereby acknowledged, has granted, bargained and sold to the Grantee(s), his heirs and assigns forever, the following described real property, located and situate in the County of Dade and State of Florida, to-wit:

UNIT NO. 15811E, of SEASIDE VILLAS, A CONDOMINIUM, according to the Declaration of Condominium thereof, recorded in Official Records Book 13564, at Page 1125, of the Public Records of Dade County, Florida, together with all appurtenances thereto, including an undivided interest in the common elements of said Condominium as set forth in the above-described Declaration as amended.

THIS conveyance is subject to the following:

1. Taxes and assessments for the year 1988 and subsequent years.
2. ~~Conditions, restrictions, limitations and easements of record.~~
3. Laws, zoning laws, regulations or ordinances affecting the subject real property, of record.
4. Covenants, conditions, restrictions, liens, terms and other provisions of the said Declaration of Condominium and other condominium instruments, including the amendment(s) to same, if any, described above.
5. Restrictions contained in Official Records Book 10212, at Page 1461, modified by Official Records Book 10212, Page 1492 and substituted by Official Records Book 11836, Page 878.
6. Easement(s) granted to Florida Power and Light Company recorded in Official Records Book 11860, Page 1070.

THIS INSTRUMENT PREPARED BY:
ARTHUR J. KLINE, ESQ.
KLINE, MOORE & KLEIN, P.A.
2665 S. BAYSHORE DR.
COCONUT GROVE, FL. 33133

RECORD AND RETURN TO:
KLINE, MOORE & KLEIN, P.A.
2665 S. BAYSHORE DR., SUITE 903
COCONUT GROVE, FLA. 33133

LAW OFFICES: KLINE, MOORE & KLEIN, P.A., GRAND HALL PLAZA, 2555 SOUTH BAYSHORE DRIVE, SUITE 903, COCONUT GROVE, FLORIDA 33133

1950

EXHIBIT B

DEF
REC 13652 PG 2080

7. The nature and extent of Riparian Rights.
8. Any and all rights of the United States of America in and to navigable waters, or any portion which is filled-in land formerly within navigable waters, and any conditions contained in any permits authorizing the filling-in of such land.
9. Title to any portion of the property lying below the mean high water mark of (the) Atlantic Ocean and/or Biscayne Bay.
10. Covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, and limitations on title set forth in restrictions recorded in Official Records Book 13008, at Page 2052, (Master Association), and in any allied instrument(s) referred to in said restrictions.
11. Agreement for construction of sewage facilities and furnishing of sanitary sewage service by Miami-Dade Water and Sewer Authority recorded in Official Records Book 11373, Page 1146.
12. Agreement for construction of water facilities and furnishing of water service by Miami-Dade Water and Sewer Authority recorded in Official Records Book 11373, Page 1173.
13. Grant of Easement (Re: 55' Roadway) recorded in Official Records Book 12697, Page 564.
14. Easements and other rights created by Final Judgment recorded in Official Records Book 9383, Page 267, Case No. 75-38664.
15. Conditions Re: Bridge recorded in Official Records Book 65, Page 218.
16. The right of interest of the public, if any, to use any part of the land seaward of the most inland of either the natural line of vegetation or the most extreme high water line.

The benefits and obligations hereunder shall inure to and be binding upon the heirs, executors, administrators and successors of the Grantee(s) and the Grantor hereby covenants with said Grantee(s) that the Grantor is lawfully seized of said land in

OFF REC 13652 PG 2081

fee simple, that the Grantor has good right and lawful authority to sell and convey said land and hereby warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said Grantor.

IN WITNESS WHEREOF, the Grantor has caused these premises to be executed the day and year first above written.

Signed, sealed and delivered
in the presence of:

Martin E. Bell
Harriet Dymnikov

ISLAND DEVELOPERS, LTD.

By: MUBEN REALTY COMPANY, a New
Jersey corporation, General
Partner of ISLAND DEVELOPERS,
LTD.

By: Andrew P. Galanos
Vice President

STATE OF NEW JERSEY)
) SS:
COUNTY OF ESSEX)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, personally appeared Andrew P. Galanos, Vice President of Muben Realty Company, a New Jersey corporation, General Partner of Island Developers, Ltd., a Florida limited partnership, who executed the foregoing on behalf of Island Developers, Ltd.

EXECUTED this 14th day of April, 1988.

Lois A. Infeld
NOTARY PUBLIC

My Commission expires:

LOIS A. INFELD
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires July 8, 1988

OFF
REC 13652 PS 2082ACKNOWLEDGMENT AND ACCEPTANCE BY GRANTEE(S)

Grantee(s) acknowledges that he has read the Declaration of Condominium, and all exhibits attached thereto, the Articles of Incorporation, the By-Laws, the Master Covenants for Fisher Island, and Articles of Incorporation and By-Laws of Fisher Island Community Association, Inc. and the Community Areas Management Agreement, described in the foregoing Warranty Deed, understands that each and every provision of the foregoing documents is fair and reasonable, is made for the benefit of all owners of the Condominium and is essential to the successful operation and management of the subject condominium development; Grantee(s) covenants for himself, his heirs, successors and assigns forever, to abide by each and every provision of said Declaration and every Exhibit attached thereto and made a part thereof.

Signed, sealed and delivered
in the presence of:

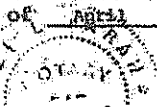
Patricia Sherman
Margaret Mallon

Bentley J. Blum (LS)
Laura U. Blum (LS)

STATE OF NY)
) SS:
COUNTY OF NY)

BEFORE ME personally appeared BENTLEY J. BLUM and LAURA U. BLUM, his wife, to me known to be the individuals described in and who executed the foregoing instrument, and freely and voluntarily executed the same for the purposes therein expressed.

WITNESS my hand and official seal all on this, the 18th day of April, 1988.



My Commission expires:

May 31, 1988

Alice Farah
NOTARY PUBLIC, State of NY

ALICE FARAH

Notary Public, State of New York

No. 41-4815895

Qualified in Queens County

Commission Expires May 31, 1988

RECORDED IN OFFICIAL RECORDS BOOK
OF DADE COUNTY, FLORIDA
BY
RICHARD P. BRINKEN
1988 APR 20 PM 3:00

EXHIBIT B

ABSTRACT OF JUDGMENT

NOTICE

Pursuant to Title 28, United States Code, Section 3201, this judgment, upon the filing of this abstract in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of 26 U.S.C. §6323(f), creates a lien on all real property of the defendant(s) and has priority over all other liens or encumbrances which are perfected later in time. The lien created by this section is effective, unless satisfied, for a period of 20 years and may be renewed by filing a notice of renewal. If such notice of renewal is filed before the expiration of the 20 year period to prevent the expiration of the lien and the court approves the renewal, the lien shall relate back to the date the judgment is filed.

Names and Address of Parties against whom judgments have been obtained		Names of Parties in whose favor judgments have been obtained
BENTLEY J. BLUM 15811 Fisher Island Drive Miami, FL 33109		UNITED STATES OF AMERICA
Amount of Judgment	Names of Creditors' Attorneys	When Docketed & Court Number
\$4,406,340.66 plus future interest, costs & surcharge	U.S. Attorney's Office Financial Litigation Unit 800 Park Blvd., Suite 600 Boise, ID 83712 Telephone: 208-334-1211	January 12, 2015 Civil No. 11-127

UNITED STATES OF AMERICA CLERK'S OFFICE, BOISE, IDAHO
U.S. DISTRICT COURT FOR THE DISTRICT OF IDAHO SS.

I CERTIFY, That the foregoing is a correct Abstract of the Judgment entered or registered by this Court.

Dated at Boise, Idaho, this 29th day of January, 2015.

ELIZABETH A. SMITH, CLERK

by: 

Deputy Clerk

EXHIBIT B